



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

Mr. Brett Norbraten
Open Records Attorney
Department of Aging and Disability
P.O. Box 149030
Austin, Texas 78714-9030

OR2009-00935

Dear Mr. Norbraten:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 332988 (DADS #2008SOLEG0245).

The Department of Aging and Disability Services (the "department") received a request for information related to the "[i]ncident [i]nvestigation [w]orksheet" and "[i]nvestigation [r]eport" of investigation number 289275 involving a named deceased individual. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as sections 242.126 and 242.127 of the Health and Safety Code. Subchapter E of chapter 242 of the Health and Safety Code concerns reports of abuse and neglect at convalescent and nursing homes and related institutions. See Health & Safety Code §§ 242.121 *et seq.* Section 242.126(g) provides that "... [the department]¹ shall make the investigation report

¹We note the Department of Human Services was abolished in 2003 and the powers, duties, functions, programs, and activities related to providing long-term care services of the Department of Human Services were transferred to the department. See Act of Sept. 1, 2003, 78th Leg., R.S. ch. 198, § 1.20(a)(2), (d), 2003 Tex. Gen. Laws 611, 637-38, 641.

available to the public on request after the date the department's letter determination is complete." The department shall delete from any copy made available to the public:

- (A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;
- (B) the person making the report of abuse or neglect or other complaint; and
- (C) an individual interviewed in the investigation.

Id. § 242.126(g)(1). Section 242.127 provides as follows: "A report, record, or working paper used or developed in an investigation made under [subchapter E, chapter 242] and the name, address, and phone number of any person making a report under [subchapter E, chapter 242] are confidential and may be disclosed only for purposes consistent with rules adopted by the [department] or the designated agency." *Id.* § 242.127. In addition, the department adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions. Section 19.2010 provides in part as follows:

(a) Confidentiality. All reports, records, and working papers used or developed by [the department] in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to [the department] as part of the investigation.

40 T.A.C. § 19.2010(a)(1). The submitted information pertains to an investigation conducted under the authority of chapter 242 of the Health and Safety Code into complaints of abuse or neglect of a nursing facility resident. You state the submitted investigation report was created pursuant to section 242.126. Therefore, we agree that all personally identifiable information in the submitted investigation report is generally excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code. We note, however, the requestor in this instance states that he is the legal representative of the estate of the named deceased individual. Section 19.2010(a)(2) provides:

If [the department] receives written authorization from a facility resident or the resident's legal representative regarding an investigation of abuse or neglect involving that resident, [the department] will release the completed

investigation report without removing the resident's name. The authorization must:

- (A) be signed and dated within six months of the request or state a length of time the authorization is valid;
- (B) detail the information to be released;
- (C) identify to whom the information can be released; and
- (D) release [the department] from all liability for complying with the authorization.

Id. § 19.2010(a)(2). Accordingly, the department must withhold the personally identifiable information in the submitted investigation report pursuant to section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code. However, the department must release the deceased individual's name in the submitted investigation report to the requestor if he provides the department with written consent that meets the requirements of section 19.2010(a)(2). *See id.* § 192010(a); *see also* Health & Safety Code § 242.126(g)(1)(A).

We further conclude that the remaining documents, which consist of investigative worksheets, were used or developed during the course of the underlying investigation and are confidential under section 242.127 of the Health and Safety Code. Therefore, the investigative worksheets must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction section 242.127 of the Health and Safety Code.²

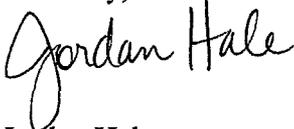
In summary, the department must withhold all personally identifiable information in the submitted investigation report pursuant to section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010(a)(1) of title 40 of the Texas Administrative Code. However, the department must release the deceased individual's name to the requestor if he provides the department with written consent that meets the requirements of section 19.2010(a)(2) of title 40 of the Texas Administrative Code. The remaining information in the submitted investigation report must be released. The investigation worksheets must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 242.127 of the Health and Safety Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jordan Hale". The signature is written in black ink and is positioned above the typed name.

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 332988
Enc. Submitted documents

cc: Requestor
(w/o enclosures)